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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Create a Consistent Regulatory Framework for the Guidance, Planning and Evaluation of Integrated Distributed Energy Resources.	Rulemaking 14-10-003

THE OFFICE OF RATEPAYER ADVOCATES' PETITION FOR MODIFICATION OF DECISION 16-12-036

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I. INTRODUCTION

Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure (Rules), the Office of Ratepayer Advocates (ORA) submits the following Petition for Modification of Decision (D.) 16-12-036, the "Decision Addressing Competitive Solicitation Framework and Utility Regulatory Incentive Pilot" (the Decision). The Decision granted Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (jointly, the IOUs) the ability to collect funding and additional incentives to enlist third-party owned distributed energy resources (DERs) to pilot traditional distribution infrastructure upgrade deferrals (IDER pilots).

ORA's Petition for Modification is timely because it was filed and served within one year of the effective date of D.16-12-036.[1] ORA's Petition for Modification is based on newly presented facts that justify modifications to D.16-12-036. Specifically, PG&E's Advice Letter (AL) 3855-G/5096-E and SCE's AL 3620-E, both filed in June 2017, requested approval for DER solutions and cost recovery for distribution system needs where PG&E and SCE had previously requested capital cost recovery within approved or pending General Rate Case (GRC) proceedings.[2] These requests represent duplicative funding requests for relieving distribution system constraints. The Decision anticipated that these types of duplicative requests would not arise, given the timing of GRCs and pilot solicitation timelines;[3] however, the pilot proposals by PG&E and SCE demonstrate that duplicative funding requests are being made. Instead of allowing cost recovery for the same project through GRC proceedings and through requests for pilot

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[1] Rule 16.4(d) states "a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified."

[2] PG&E AL 3855-G/5096-E at pp. 13-14. PG&E's AL 3855-G/5096-E can be found at: https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_5096-E.pdf. PG&E response to ORA Data Request Numbered ORA-AL5096E-PGE002, attached herein as Attachment A. SCE AL 3620-E, pp. 8-9. SCE's AL 3620-E can be found at: https://www.sce.com/NR/sc3/tm2/pdf/3620-E.pdf. SCE Response to ORA Data Request numbered ORA-SCE-AL 3620 E-001, attached herein as Attachment B.

[3] D.16-12-036, Finding of Fact 107 at p. 73.

project funding, in addition to the ability to collect a deferral incentive, the Decision should be modified to require the IOUs to use or apply its GRC budgets to fund proposed IDER pilots that will defer previously funded traditional capital upgrades. The Decision also should be modified to reflect the Commission's clarifications regarding whether the IOUs may request simultaneous GRC capital and IDER pilot funding authorization pursuant to Energy Division's October 27, 2017 Draft Resolution in response to the IOUs' IDER Pilot ALs.

II. BACKGROUND

A. The Decision established pilots to test an incentive mechanism for DER deployment to displace or defer traditional distribution infrastructure upgrades.

The Decision requires that each IOU file at least one but up to four distribution infrastructure deferral pilot projects that will utilize DERs in lieu of traditional utility infrastructure investments.[4] The Commission authorized the IOUs to recover administrative costs and contract costs related to procuring the DER alternatives in the IOU's next GRC, subject to reasonableness review and a cost-effectiveness cap.[5] The Commission also authorized the IOUs to earn a four percent return on the contracted DER investments, which will be procured from third parties through a competitive request for offer (RFO) process.[6] The IOUs will record incentive payments in a balancing account for recovery through the annual Energy Resource Recovery Account application.[7]

B. The Decision assumed that double-recovery of distribution investments was unlikely to occur.

In comments on the Commission's Revised Proposal included in its November 10, 2017 Proposed Decision on the IDER pilot framework, ORA expressed concern that

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[4] D.16-12-036, Ordering Paragraph (OP.) 13 at p. 83.

[5] D.16-12-036, p. 60 and OP. 21 at p. 86.

[6] D.16-12-036, OP. 20 at p. 86.

[7] D.16-12-036, OP. 22 at p. 86.

funding for the IDER deferral mechanism would duplicate IOU funding requested in the GRCs for distribution capital investments, since the IDER projects could potentially address the same needs at a particular location.[8] The Decision ordered a review of future GRCs to prevent double recovery,[9] but determined that further precautions to review prior or pending GRCs were unnecessary since double-recovery was unlikely to occur:

> …the timeline for project identification and distributed energy resource solicitation and deployment is likely to be lengthy enough that the traditional investment alternative would not have been reflected in a prior general rate case's revenue requirement.[10]

C. The utilities' IDER incentive pilot advice letters filed in June 2017 include PG&E's Rincon Project and SCE's Farrell Project.

In accordance with the Decision, the IOUs filed Tier 3 Advice Letters in June of 2017,[11] presenting their pilot solicitation process, project proposals, and timelines. The single pilot project proposed by PG&E is at Rincon Substation, which also was included in multiple prior GRCs, including the recent GRC that approved the Rincon project in May, 2017.[12] In its prior three general rate case cycles (2011, 2014, and 2017), PG&E requested and was granted recovery for approximately $10,654,000 in capital projects to mitigate forecasted capacity deficiencies at the Rincon Substation.[13]

Similarly, one of the three pilot projects proposed by SCE was a project SCE also requested funding for in its pending GRC Phase I. SCE's proposed pilot project at the Farrell Substation duplicates the 2016 Energy Storage and Distribution Deferral Request

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[8] ORA comments on November 10, 2016 Proposed Decision, filed November 30, 2016 at p. 10.

[9] D.16-12-036, OP 23 at p. 87, stating, "Pacific Gas and Electric Company's, San Diego Gas & Electric Company's, and Southern California Edison Company's distribution spending request in their general rate cases shall be reviewed to ensure that no double recovery of traditional distribution spending occurs.

[10] D.16-12-036 at p. 60 and Finding of Fact 107 at p. 73.

[11] SDG&E AL 3089-E can be found at: http://regarchive.sdge.com/tm2/pdf/3089-E.pdf; SCE AL 3620-E can be found at: https://www.sce.com/NR/sc3/tm2/pdf/3620-E.pdf; PG&E AL 3855-G/5096-E can be found at https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_5096-E.pdf.

[12] D.17-05-013 at pp. 139-141.

[13] PG&E response to ORA Data Request Numbered ORA-AL5096E-PGE002.

in SCE's pending GRC Phase I.[14] In its 2017 GRC application, SCE identifies the capital cost for traditional upgrades at the Farrell Substation,[15] which is also the location of its proposed IDER Farrell pilot project. SCE has since renamed the IDER Farrell Project the "Eisenhower Project" through Supplemental AL 3620-E-A-B filed on September 11, 2017. SCE confirmed in an ORA data request response that the funding from its GRC intended for the requested Farrell Project would instead pay for the upgrades at Eisenhower, thus linking the two projects and their funding.[16]

D. Energy Division's October 27, 2017 Draft Resolution E-4889

Energy Division's Draft Resolution E-4889 would approve with modifications the three IOUs' ALs requesting approval to start the Competitive Solicitation Framework Incentive Pilot solicitation process.[17] In response to ORA's double recovery concerns presented in ORA's protest to SCE's AL 3620-E, SCE asserted that D.14-12-036 states that any previously authorized distribution capital spending related to a deferred or avoided project would not be reviewed until the next GRC.[18] Importantly, Draft Resolution E-4889 clarifies that "while D.16-12-036 states that the Commission will not remove the cost of any displaced distribution investment from a utility's authorized revenue requirement prior to the next GRC, the Commission has not yet authorized SCE's revenue requirement."[19] Moreover, in addressing ORA's double recovery concerns, the Draft Resolution specifically clarifies that SCE's "Eisenhower project is the same distribution upgrade identified in SCE's AL 3620-E for the Farrell project and

[14] SCE Response to ORA Data Request numbered ORA-SCE-AL 3620 E-001.

[15] SCE Response to ORA Data Request numbered ORA-SCE-AL 3620 E-001.

[16] SCE Response to ORA Data Request Numbered R.14-10-003 ORA-SCE-007-AL-3620-E-A, attached herein as Attachment C.

[17] Draft Resolution E-4889 at p. 2.

[18] SCE Response to ORA Protest at pp. 7-8.

[19] Draft Resolution E-4889 at pp. 40-41.

would be funded from funds repurposed from SCE's 2018 GRC application request for the Farrell project."[20]

III. DISCUSSION

A. The Commission's assumption proved to be incorrect because the utility IDER Pilot Solicitation Advice Letters explicitly propose upgrade deferrals identified in pending and previously approved GRC Applications.

PG&E's AL 3855-G/5096-E and SCE's AL 3620-E both identify deferral projects requested in previously authorized or pending GRC applications. Specifically, PG&E's sole proposed pilot and half of SCE's remaining pilot proposal[21] overlap with funding requests made in their GRCs. This overlap shows that the Commission's reliance on assumptions regarding the timeline for DER solicitation and deployment have proven to be incorrect and have not prevented funding requests for pilot projects at sites where cost recovery had been previously requested and/or authorized within GRCs. They therefore contradict the Commission's finding in the Decision that the "timeline for project identification and distributed energy resource solicitation and deployment may be lengthy enough that the traditional investment alternative would not be reflected in a prior general rate case's revenue requirement."[22] Energy Division's Draft Resolution E-4889 highlights this funding duplication where it acknowledges that SCE's Eisenhower project is the same upgrade as its previously proposed Farrell project and "would be funded from funds repurposed from SCE's 2018 GRC application request for the Farrell Project."[23] These changed facts sufficiently warrant a modification to address the Decision's demonstrably erroneous assumption and address the real likelihood of double recovery.

Since the objective of the pilots is to prove the viability of "cost-effective deployment of Distributed Energy Resources (DERs) that defer or displace more

[20] Draft Resolution E-4889 at p. 40.

[21] SCE also withdrew another of its originally proposed IDER pilot projects, leaving it with two proposed pilot projects. SCE AL 3620-E-A at pp. 1-2.

[22] D.16-12-036, Finding of Fact 107 at p. 73.

[23] Draft Resolution E-4889 at p. 40.

traditional distribution capital projects and expenditures,"[24] the Decision should not establish a model where funds may be recovered twice.[25] Double-recovery creates an opportunity for a utility to earn a profit equal to the amount of the project included in the GRC. As mentioned in previous ORA comments, granting Utilities additional profits when they are should be neutral to DER acquisition is against the principles of cost of service ratemaking.[26] Moreover, in accordance with Public Utilities Code Section 451,[27] ratepayers may not pay twice for the same project. To require ratepayers to pay for duplicative infrastructure upgrades is neither just nor reasonable. The Commission should therefore revise the Decision to reflect these new facts.

B. Draft Resolution E-4889 on the IDER pilots recognizes the potential for double-recovery but fails to implement an appropriate remedy.

In Draft Resolution E-4889, issued on October 27, 2017, the Energy Division agrees that funding has been requested in two places.

> We agree with ORA. The Eisenhower project is the same distribution upgrade identified in SCE's AL 3620-E for the Farrell project and would be funded from funds repurposed from SCE's 2018 GRC application request for the Farrell Project.
>
> SCE's argument is partially flawed. While the Decision states that the Commission will not remove the cost of any displaced distribution investment from a utility's authorized revenue requirement prior to the next GRC, the Commission has not yet authorized SCE's revenue requirement.[28]

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[24] Attachment to Scoping Memo, issued September 1, 2017 at p. 1.

[25] Without Commission intervention, the IOUs will be allowed to recover the same funds twice (i.e., once from prior GRCs, and again from tracked contract costs and immediately recoverable administrative costs for the pilots).

[26] ORA Comments on Proposed Decision, filed November 30, 2016 at p. 10.

[27] Public Utilities Code Section 451 states, "[a]ll charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable."

[28] Draft Resolution E-4889 at pp. 40-41.

While the Draft Resolution recognizes the duplicative funding, it does not order a clear remedy. One option would be to wait until the resolution of SCE's GRC to determine whether a duplicative funding request has in fact been authorized. However, waiting for resolution in SCE's GRC will not prevent double recovery of those funds within the IDER pilot process. The record in that proceeding is closed, and the issue of IDER funding has not been explored by stakeholders through the proceedings. This unfortunate timing makes it difficult for the Commission to have a basis for rejecting a funding request within that proceeding based on arguments submitted in a separate proceeding. Additionally, any decision on IDER pilots should not remain uncorrected when there are errors brought to light by new facts. Finally, even if a remedy could be crafted in SCE's pending GRC, it would not address the duplicative funding requested in PG&E's IDER pilot proposal and GRC Phase I.

C. The Commission should direct the use of GRC funds for IDER pilot projects serving the same distribution system need.

To remedy the problem of double recovery described above, the Commission should direct the IOUs to utilize relevant GRC funds for the IDER pilot projects and DER solutions if such funds have already been requested or authorized. Any GRC funds requested or authorized for projects that meet the same distribution system need as an IOU's IDER pilot project should be allocated to fund the administration costs, contract costs, and incentives paid to the third-party DER providers and to manage the deferral pilot. The contracts with third-party DER providers would still be subject to the Tier 3 Advice Letter process outlined by the Commission in its Decision.[29] The mechanism to provide the IOUs a four percent additional incentive calculated from the payment amounts to DER providers would also remain intact and additional to the GRC funds.

This modification to the funding mechanism is reasonable as it provides reasonable cost recovery by IOUs, as the amount budgeted for the distribution system

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[29] D.16-01-036, OP 7 at p. 80.

capital project within the GRCs should match or exceed what the IOUs are willing to spend on the IDER pilots. Any savings from spending less on the DER solutions can be retained by the IOUs as an additional incentive for cost savings through deferral.[30]

D. IDER pilot cost recovery must occur in coordination with rate case outcomes, not in isolation.

To prevent double-recovery, the IDER pilot program should be allowed to access funds requested and approved within GRCs. An uncoordinated approach to infrastructure development and maintenance will otherwise result in unnecessary and unreasonable ratepayer costs. Therefore, it is appropriate to apply funds for the same project to IDER pilot projects.

However, modifications to the Decision will rightfully apply only to the current IDER pilot framework. Any longer-term policy changes for deferral investment frameworks, and their interaction with capital budgets approved through GRCs, should be resolved in the ongoing Distribution Resources Plan proceeding (Rulemaking 14-08-013).

E. Modifications to the Decision based on ORA's Proposed Remedy.

Based on the new facts presented, the Commission should modify page 61 of D.16-12-036 to add the following paragraphs before the paragraph starting with "In comments to . . .":

> <u>In the event a utility has previously requested capital cost recovery within approved or pending General Rate Case (GRC) proceedings that are identical to proposed IDER pilots, any GRC funds requested or authorized for projects that meet the same distribution system need as the IOU's IDER pilot project should be allocated to fund the administration costs, DER provider incentives, administration costs, and contract costs paid to the third-party DER providers and to manage the deferral pilot. The contracts with third-party DER providers would still be subject to the</u>

[30] The Commission should consider the potential impacts of the absence of contingency funding if the DER deferral solutions fail.

Tier 3 Advice Letter process outlined by the Commission in this Decision.

> This modification to the funding mechanism is reasonable as it provides reasonable cost recovery by IOUs, as the amount budgeted for the distribution system capital project within the GRC should match or exceed what the IOU is willing to spend on the IDER pilots. Any savings from spending less on the DER solution can be retained by IOU as an additional incentive for cost savings through deferral. This differs from the approach adopted by the New York Public Service Commission;[31] however, the incentive mechanism adopted in this Decision adequately addresses the concerns of utility disincentive for DER solutions.

> To prevent double-recovery, the IDER pilot program should be allowed to access funds requested and approved within GRCs. An uncoordinated approach to infrastructure development and maintenance will otherwise result in unnecessary and unreasonable ratepayer costs. Therefore, it is appropriate to apply funds for the same project to IDER pilot projects.

Accordingly, the following Findings of Fact (FoF) should be modified as follows:

> FoF 107: The timeline for project identification and distributed energy resource solicitation and deployment may not be lengthy enough that the traditional investment alternative would not be reflected in a prior general rate case's revenue requirement.

> FoF 108. If the traditional investment had been reflected in rates, it ~~would be Difficult~~ should be reviewed by the Commission ~~to determine given the aggregate nature of distribution capital forecasts in general rate cases~~ to determine whether these projects address the same distribution system need.

> FoF 109. The proposed approach will enable ~~a utility~~ ratepayers to retain savings from deploying less costly distributed energy resources in lieu of the previously

[31] Scoping Memo issued September 1, 2016 at pp. 2-3 and p. 14 of the Attachment for an explanation of New York's reasoning and approach.

authorized distribution project, while still allowing the utility to retain any achieved savings from the DER solution.

FoF 110. The proposed approach ~~is similar to~~ differs from the approach adopted by the New York Commission.

~~FoF 112. It is reasonable to test the New York approach as part of the pilot.~~

The Ordering Paragraphs (OP), therefore, also should be modified accordingly:

OP 23. For pilot projects that are the same as projects proposed for recovery through a previous or pending GRC, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company will allocate the GRC funding to the Utility Regulatory Incentive Mechanism Pilot administration, contract costs, and DER incentive payments. Any funding from this pool not needed for the Pilot will be retained by the utility.

OP 24. The cost of the annual payments to the distributed energy resource provider shall be considered pre-approved for recording in a balancing account and recovery in the next general rate case, or set aside from funds previously approved or requested from a general rate case for that utility. Pacific Gas and Electric Company's, San Diego Gas & Electric Company's, and Southern California Edison Company's distribution spending request in their general rate cases shall be reviewed to ensure that no double recovery of traditional distribution spending occurs.

IV. CONCLUSION

The Commission, therefore, should modify D.16-12-036 based on the new facts that have been presented.

Respectfully submitted,

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